

K.S.A. 44-534a confers upon the Appeals Board the authority to review preliminary findings which address the above enumerated issues. Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds that the August 31, 1994 Preliminary Decision of the Administrative Law Judge should be reversed.

The claimant alleges that she began experiencing symptoms of pain and numbness in her hands, arms, shoulders and up into her neck while working for respondent in the late spring or early summer of 1993. She alleges repetitive injuries up through her date of termination on December 3, 1993. She admits that she did not notify her employer of her complaints during the time she was working, but that following her termination on December 3, 1993, she prepared a letter, a copy of which is made a part of the record in this case as Claimant's Exhibit 3 to the August 18, 1994 Preliminary Hearing transcript. That letter goes into some detail concerning various matters, including reporting a work-related injury allegedly caused by her job duties with respondent. The letter describes numbness and weakness in both hands and arms, a very stiff neck and sore shoulders due to the typing, calculating and phone work claimant had been doing. Claimant testified that she mailed the letter on December 10, 1993, addressed to the home address of Patricia Williams, the owner of the respondent business. When she did not receive a response to that letter, claimant again contacted the ombudsmen's office of the Division of Workers Compensation, which had previously advised her to send the initial letter. She then sent a letter to the Division of Workers Compensation, which is Claimant's Exhibit 4, dated December 30, 1993. That letter resulted in Notice of Claim being given to respondent and its insurance carrier through the Division of Workers Compensation in early January 1994. Patricia Willson, owner of Jays Uniforms, testified that she never received the December 10, 1993 letter. Claimant testified that the letter was never returned to her by the postal service. Unfortunately, the letter was sent by regular mail and not by certified mail.

K.S.A. 44-520 provides that a claimant must notify the respondent of an accident within ten (10) days of its occurrence, unless respondent possessed actual knowledge of the accident or failure to so notify within ten (10) days was due to just cause. Based upon the evidentiary record presented and for purposes of preliminary hearing, the Appeals Board finds that the unexplainable failure of the December 10, 1993 letter being delivered to respondent constituted just cause for claimant's failure to give notice within ten (10) days such that the time for giving notice was extended to seventy-five (75) days pursuant to statute.

The Administrative Law Judge found it to be entirely possible that claimant reinjured or aggravated her preexisting hand condition during her employment with respondent and that this might have continued up until the time of her termination on December 3, 1993. The Administrative Law Judge goes on to base his denial of claimant's application for medical treatment and temporary total disability benefits upon a finding that claimant did not give proper and timely notice of accident. The Appeals Board understands the Preliminary Decision by the Administrative Law Judge to include a finding that claimant did meet her burden of proof that she suffered personal injury by accident arising out of and in the course her employment with respondent. Based upon its review of the record, the Appeals Board concurs with that finding of the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the August 31, 1994 Order of Administrative Law Judge Robert H. Foerschler be, and is hereby, reversed and remanded to the Administrative Law Judge for further proceedings and order consistent with this opinion.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS
Michael Unrein, Topeka, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director